

MINUTES OF BOARD OF ADJUSTMENT

December 13, 2004

PRESENT: Larry G. Miller
Dave Blackwell
Leon Nelson
Richard Sudweeks
Winifred Jensen, City Recorder

EXCUSED: Lee Kimball

OTHERS PRESENT: Spencer Withers, Shane Withers, Dex Andrews, Patty Andrews, Eric Yergeson

Larry Miller called the meeting to order at 9:10 p.m. The meeting was called as a scheduled meeting, and notice of the time, place, and agenda had been posted at the Highland City Offices, Strasburg Park, and Heritage Park, and faxed to the *Deseret News*, *Daily Herald*, and *Salt Lake Tribune* on December 8, 2004. Minutes of the meeting held September 25, 2004 were approved by motion from Leon Nelson. Motion was seconded by Richard Sudweeks, and it passed by unanimous vote.

1. Request for Variance on Lot 7 at the Greens at the Highlands for 6' Side Yard

Background: Jon Fullmer Construction is pursuing a 6' side yard variance on Lot 7, at the Greens of the Highlands, due to the American Fork Irrigation easement.

Discussion: Spencer Withers, Project Manger for Jon Fullmer Construction and representing Gordon and Lynn Longsdale, explained the request, for the 6' side yard variance on Lot 7 at the Greens at the Highlands, is due to a 30' wide easement for piping the American Fork Ditch, which runs on the east side of the lot. He indicated this easement runs across four different lots in the subdivision, but the other lots are not as impacted as is Lot 7. He further indicated the easement comprises 1,000 sq. ft. and is located on the front end of the lot. It forces a house to the back, cuts into the back yard, and it doesn't leave enough space for a 1,270 sq. ft. home on the main floor, along with a two-car garage. Mr. Withers indicated it is possible to place a structure if they can have a 24' side setback, instead of 30'. He indicated, with a variance, there would be 25' from the driveway to the property line, which is sufficient for parking a large vehicle without impacting the sidewalk. He further noted visually there won't be that much impact because the garage will be on the side. The property owner to the west, the property owners, and the developers have signed off on the application and they comprise the architectural committee. The variance forces the home away from the adjacent property owner's home on Lot 6, which is desirable, and these property owners don't have a problem with the home being closer to the street.

Leon Nelson asked what the CC& R's required. Mr. Withers indicated they require a two story structure of 1,800 sq. ft. He further indicated the proposed size of the home would be 1,270 sq. ft. on the main floor with a two-car garage and the second floor would be 1,800 sq. ft., for a total of 3,120 sq. ft. Leon Nelson further inquired whether 4500 West is a through street. Mr. Withers indicated the neighbors have blocked off the street, they are trying to keep the road from being connected, and there is no access. The road has been paved. Richard Sudweeks indicated a sign had been posted on that street that the public wasn't welcome.

Following discussion, Larry Miller felt the American Fork Irrigation easement is the key for determining the uniqueness for allowing a variance. Leon Nelson also noted the builder had made an effort to modify the footprint for the main floor.

Motion: Richard Sudweeks moved approval of the petitioner's request for a 6' side yard setback for Lot 7 of the Greens at the Highlands, based on the width, location, and angle of the easement; the fact the property is on a corner lot with a 50' setback from the front of the house; and

there would still be a 24' side setback from the property line on the east . Motion was seconded by Leon Nelson, and it passed by unanimous vote.

2. Request for 3' Side Yard Variance on Lot 7 of the Sierra Hills Subdivision

Background: Dex and Patricia Andrews are requesting a 3' side yard variance on Lot 7 of Sierra Hills.

Discussion: Dex and Patty Andrews, and the developer, Eric Yergenson, met with the Board of Adjustment to request a 3' side yard variance on Lot 7 of Sierra Hills. Mr. Andrews explained the street adjacent Lot 7 was planned with a curve in the road in order to accommodate the possibility of future access should homes be constructed on the adjoining property. He explained there was quite a dispute at the City Council meetings to appease those owners, and in doing so the developer had to change the plat design by putting in a curved road which affected Lot 7. As a result, the home they planned to build now requires a 2' variance on the corner of the house and a 3' variance in the back in order to accommodate a 3 car garage. He indicated they have worked hard to see if they could change the plans for the house, but they can't do it. Mr. Andrews explained the developer, Eric Yergeson, is developing 11 homes in the subdivision and a home without a third car garage would be a deviance from the subdivision. He indicated they desire a third car garage, and aesthetically, with a three car garage, it is much better and would enhance the look of the neighborhood. He explained the other option would be to build a two-car garage, and this would mean he would need to park his boat in the back yard and it would be a distraction for the neighborhood. He indicated the home would have 2,400 sq.ft. on the main floor and 2,400 sq. ft. on the bottom floor. They are not interested in having a two story home, as this will be their retirement home.

Eric Yergenson noted to the east of the subdivision there is the possibility of three lots being developed, but there would be no other through street or road that would connect; therefore, the traffic along the street on the north side would be minimal. The only reason it was placed there was through negotiation so as to not land lock the three lots to the east. He further explained by facing the house to the west, aesthetically, it will make the subdivision look conforming and they have encouraged three-car garages. He noted the house prices will be \$450,000 to \$600,000. He explained there is 9' between the sidewalk and the property line (4' sidewalk, 4' planter strip, and 1' behind the property line). The setback is figured from the 9'.

Mrs. Andrews indicated when they picked out the lot it was rectangular before the City Council shaved it and made it curved. She also noted the stub road could remain that way for years.

Mr. Yergeson explained Highland City wanted the developer to put in a trail easement on the back of the property which would back up to Mitchell Hollow, the adjoining property owners fought it, and the City determined not to require the trail easement, but the Pecks and Deans (property owners to the east) petitioned to have a stub road placed in Sierra Hills. He indicated the Deans petitioned to have the road curved in order to get it away from the existing home. Mr. Yergeson indicated the development spent a lot of money to put in the road so the adjoining property can potentially develop three lots.

Dave Blackwell inferred the Andrews purchased the lot and it was intended to be a rectangular lot. He later inquired if the road was in place when the Andrews bought the lot and Mrs. Andrews indicated it was.

Leon Nelson inquired whether the Andrews had considered moving the house on the lot and Mr. Andrews indicated the value of the property is for a view to the west. Larry Miller inquired whether they could widen the house to the east and Mr. Andrews indicated they had done that. Mr. Yergenson indicated the rooms are rectangular in shape.

Larry Miller clarified the Board of Adjustments has to look at uniqueness with every property that

would prohibit that particular property from enjoying the benefits of a normal lot and if there is uniqueness that lot can enjoy the same benefit. There are also safety and aesthetic issues which can be considered.

Richard Sudweeks indicated the City Council required the road to be curved and it was imposed on the lot, but if it were straight there would still be a problem for complying with the setbacks. He indicated he was having a hard time seeing the uniqueness to permit a variance. Discussion ensued.

Larry Miller indicated in order for the subdivision to get approval the City mandated the creation of the road and it cut down the lot frontage as it was originally platted. Thus the City created the problem as the lot is narrower or else a variance wouldn't have been needed. He also noted the road is wider than necessary for the number of lots it would service.

Motion: Larry Miller moved to approve the 3' side yard variance on Lot 7 for Sierra Hills, and requested the minutes of the City Council and Planning Commission Meetings be attached, and based on the fact the plans were altered from original submission to the Planning Commission requiring the existence and placement of 9500 North which decreased the size of Lot 7. The road was to accommodate adjoining property to the east which would have been landlocked without it. The road caused Lot 7 to be narrow enough that a variance is needed to allow the proposed home to be constructed. The absence of the road would not have required the request for the variance. The motion was seconded by Richard Sudweeks, and it passed by the following voting in favor: Leon Nelson, Larry Miller, and Richard Sudweeks. Dave Blackwell voted against the motion as he felt the uniqueness of the lot is not a strong case for approving a variance and he felt there is another alternative that the home could be turned 90 degrees and it would meet the setbacks regardless of how the other homes in the subdivision faced.

Discussion ensued. Larry Miller clarified the developer's claim the original concept was submitted and the City changed it; thus it would suggest the Board of Adjustment should meet again on the variance request and the minutes of the Planning Commission would verify how the lot was shaved down.

Motion: Richard Sudweeks moved to recess until December 20, 2004, until the Board of Adjustment can look at the minutes of the Planning Commission and City Council meetings when Sierra Hills was discussed. Motion was seconded by Dave Blackwell and it passed by unanimous vote.

3. Adjournment

Larry Miller moved to adjourn. Meeting adjourned at 10: 26 p.m.